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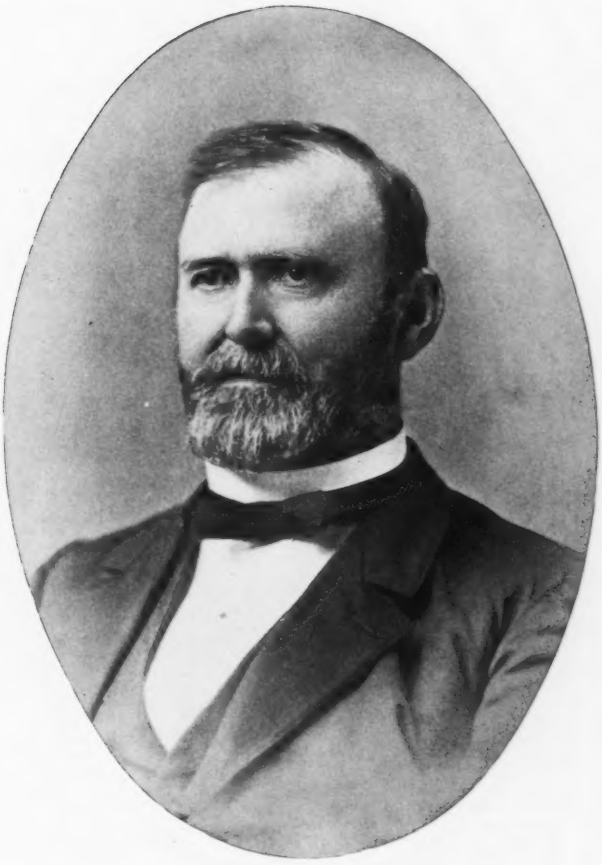

W. A. Woods

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Boston, 10 Tremont Street.

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William A. Woods.

William Allen Woods was born May 16, 1837, near Farmington, Marshall County, Tennessee. He was the son of a Presbyterian clergyman who died June 30, 1837, at the age of twenty-six years. In 1847 he removed with a step-father, who died within the year, to Davis County, Iowa. In 1855 he matriculated in Wabash College, Crawfordsville, Indiana, where he graduated in 1859 and remained as tutor for the following year. He was teacher at Marion, Indiana, in 1860–61. After the battle of Bull Run he enlisted for service in the Union Army, but by reason of accidental injury (to a foot) was compelled to cancel his enlistment. He was admitted to the bar in December, 1861. He located at Goshen, Indiana, on March 17, 1862. He was elected a member of the state legislature in 1866 and served during the session of 1867. He was elected circuit judge for the thirty-fourth judicial circuit of the state in 1873, at a special election, and in 1878 was re-elected without opposition. He was elected a judge of the supreme court of the state in 1880, and served on that bench from January, 1881, to May 8, 1883, when he was appointed by President Arthur a United States district judge for the district of Indiana, and, without waiting for the confirmation, which came at the next session of Congress, he took the oath of office. In December, 1889, he was nominated by President Harrison, and on March 17, 1892, was confirmed and commissioned United States circuit judge for the seventh circuit, under the act of March 3, 1891, creating United States circuit courts of appeals, of which court, since March 4, 1893, he has been the senior, and, consequently, the presiding, judge, his associates being United States Circuit Judges James G. Jenkins and John W. Showalter.

The judicial characteristics of Judge Woods were well stated in "The Green Bag," Vol. IV., p. 267, in an article on the supreme court of Indiana, as follows: "He is a man of originality, depending less than the ordinary judge upon precedents and the opinions of others. He is fearless." It says, further: "The language of his opinions is forcible and they are totally destitute of verbiage. He goes directly to the core of the case, decides it in a few paragraphs, reasoning out every question and citing few authorities. Although he was but little over two years on the supreme court bench, he ranks as one of the strongest men who ever sat upon it."

In the United States district court his most notable work on the bench consisted of charges to grand and petit juries in the "Tally-Sheet Case" and other election cases (for which see *Ex parte* Coy, 127 U. S. 731, 32 L. ed. 274; United States *v.* McBosley, 29 Fed. Rep. 897; *Ex parte* Perkins, 29 Fed. Rep. 910); and his charge to the grand jury in respect to bribery at elections ("Blocks of Five Cases"), (See Chicago Legal News, February 2, 1889.) This charge, the substance of which was that advising or counseling bribery, under § 5511, U.S. Rev. Stat., was not punishable unless the bribery was committed or attempted, was made the subject of severe and long-continued criticism, but was in complete accord with the decision of the Supreme Court

in United States *v.* Mills, 32 U. S. 17 Pet. 138, 8 L. ed. 636. Of his work in the United States circuit court special mention may be made of his opinion on the question of the opening of the World's Fair on Sundays (United States *v.* World's Columbian Exposition, 56 Fed. Rep. 630), and the injunction against interference with interstate commerce and the carrying of United States mails by the railroad strikers of 1894, and the opinion delivered on the trial of Debs and others for contempt of court in disobeying the injunction. United States *v.* Debs *et al.*, 64 Fed. Rep. 724.

Judge Woods was married December 6, 1870, at Des Moines, Iowa. He has two children, a daughter and son. His home since August, 1883, has been at Indianapolis.

Cosmopolitan Law.

A working legal text-book citing codes and authorities of Egypt, India, and continental Europe, as well as of England and the United States, is something of a novelty. Coming from Delhi, India, as the work of a native lawyer and judge, which displays great research, learning, and legal acumen, as well as an admirable command of the English language, it is an impressive reminder of the growing dominion of English law and the English language. Such is the excellent work of Hukm Chand on "The Law of Consent." It is the first book on that subject in our language, and discusses it with reference to contracts and torts as well as crimes. The subject is one of much practical importance, and both English and American lawyers will be gladly taught by Hukm Chand.

Belated State Reports.

Years of delay in publishing the official reports of a state are discreditable. The reporter may struggle hard to prevent it, but be powerless for lack of legislative appropriations to print the work. Explanations differ in the different cases, but such delays exist in several states. The wonder is that the bench and bar submit to it. Emphatic protest from them would doubtless stir the legislature to find a remedy. The delay saves nothing, but costs much. It compels one who would know the law to incur the needless expense of obtaining it from other sources during the long period of waiting for the official reports. A long-standing abuse of this kind has been remedied in several states which now have their reports published promptly. A little organized effort of lawyers in almost any state where the reports are overdue would be sufficient to find out where the fault lies, and then cure it.

Political Judges.

The popular election of judges has often been deplored by critics of our institutions. Our English friends have been quite inclined to be supercilious in their comments on the subject. But with all the political influences which prevail in our country, and that sometimes affect even judicial nominations, the judges elected by the people have usually been men of conceded fitness. The attempt to put a mere politician on the bench has been sometimes made by a political convention of a dominant party only to meet defeat at the polls. Candid men must concede that the system of electing judges, although a severe test of the republican theory, has been in a good degree successful.

The present profound dissatisfaction of Englishmen with their judicial appointments may be well considered by opponents of an elective judiciary. Great English journals, such as "The London Times" and "Westminster Gazette," as well as the law journals, have been lately chanting a *miserere* over unfit appointments to the bench. They speak of appointments "little short of a judicial scandal," of the "packing of the bench with men who are party men first and lawyers afterwards," or "purely political barristers," and declare that the present average of the judges of first instance is notoriously low. "The London Law Times," in one of the most temperate of the articles on the subject, declares that judgeships have apparently "fallen into the wretched category of prizes to be given to the relatives of cabinet ministers or political partisans, wholly regardless of legal experience and judicial qualifications," and that "if the course continues to be pursued the time must soon come when confidence in the bench will die. Even now divisional courts are sometimes so constituted as to excite the laughter of the profession." Would it not be better for the English courts if the appointments were merely nominations which the people might defeat, and not merely bewail?

A Disgrace to the Bar.

Scandalous advertisements by divorce lawyers are vigorously denounced in the December "Law Notes" (Northport, N. Y.) both in editorial comment and in an article by B. A. Milburn. The article gives sample advertisements of divorce lawyers taken from daily papers of various cities, and calls upon lawyers and bar associations to purge the profession of this degradation. It cites the case of People, Attorney General, *v.* MacCabe, 18 Colo. 186, 19 L. R. A. 231, in which an attorney was suspended for anonymously advertising "Divorces legally obtained very quietly, good everywhere." This decision cites the similar case of People *v.* Goodrich, 79 Ill. 148. Some advertisements quoted are plainly subject to the condemnation of these decisions. They hint at unlawful business by getting divorces in fraud of the law.

As the family is the nucleus of all civilization, reverence for marriage and fidelity to its obligations are the very soil and root of good citizenship. To encourage laxity of marriage and to propagate divorce will lower that morality without which men are degraded and nations decadent. The patriotism on which every great nation must be builded will not live divorced from other virtues. The man who would die before he would betray his country is he that would die to protect home, wife, or child. The pride that feels a stain like a wound, the honesty that cannot be bribed, the honor that will keep a pledged word, the justice that not even friendship or fear can swerve, the fidelity that stands at the post of duty in the face of danger and death—all these grow in the same bundle of life with loyalty to friend, family, and country. None of these can be weakened without harm to the state.

Most lawyers have too high a sense of their professional obligations and a manhood too honorable to permit them to encourage a needless and foolish divorce. Many a lawyer has calmed instead of fanning the fury of some family tempest, and has had the priceless satisfaction of knowing years afterwards that he saved the family and kept both husband and wife from wreck. A lawyer to whom such considerations are less than the fees of a divorce suit is unfit for his profession. An attorney who stirs up litigation of any sort for the sake of getting business is a public nuisance. One who tries to stimulate the tendency to divorce is like a physician who would purposely spread contagion in order to enlarge his own business. Such a social parasite is not only disgusting, but pestilential. He poisons the body of society as he feeds upon it. The bar associations cannot be too vigorous in freeing the profession from such vermin.

The Right to Overrule a Bad Decision.

The proposition that a judicial precedent establishes a law, and the emphatic declaration that "tampering with or overruling previous decisions is fraught with dire consequences to the very liberty of the people" is said (by a newspaper report) to have been made in a recent address by Hon. Henry Wollman, of Kansas City. If this means (as, in the brief and perhaps inaccurate report, it seems to mean) that a court has no power to overrule any prior decision, however bad, it can by no means be admitted. Possibly it is only meant to emphasize the impolicy and harm of unnecessary judicial fluctuation.

The exact binding force of a precedent is not easy to define. It should have weight, but not enough to crush reason. Bouvier says: "The courts find it necessary to overrule cases which have been decided contrary to principles. Kent says (Com. Vol. I., p. 477) that such decisions "ought to be examined without fear and revised without reluctance, rather than to have the character of our law impaired and the beauty and harmony of the system destroyed by the perpetuity of error."

Instability of the law is unfortunate, but in some degree it is necessary to growth. If the rule of *stare decisis* made precedents absolutely unchangeable the past errors of the courts would hopelessly fetter the judicial reason. If every judicial conclusion had been like "a law of the Medes and Persians which altereth not," our jurisprudence, which is the living growth of centuries, would have been a curious conglomerate of fossilized rules, both good and bad.

Even if a "judicial precedent establishes a law," may not the power which made the law repeal it?

The true attitude of a court toward a precedent is much like that toward a legislative act, although the grounds of attack are not the same; the law previously established, either by court or legislature, should be sustained unless clearly bad, and perhaps even then if it has become a rule of property. To

overthrow a precedent is a delicate matter; it should never be done in a doubtful case; but the power to do it is plain and it is of inestimable value.

Index to Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 37, Parts 5 and 6.
Book 38, Part 1.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

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Among the New Decisions.

Accord and Satisfaction.

Accepting less than the whole amount due on a debt, with a distinct agreement that it shall extinguish the obligation, is held, in Clayton *v.* Clark (Miss.) 37 L. R. A. 771, sufficient to operate as a discharge, although the money is not paid at any different time or place than that originally agreed upon.

Arrest.

To justify the arrest of a citizen for disturbing a military parade by obstructing a public street and refusing to make way for the parade, it is held, in White *v.* State (Ga.) 37 L. R. A. 642, that the parade must be one that is authorized by law.

Banks.

A savings bank by-law declaring a waiver by depositors of all individual liability of officers or stockholders which is provided by law is held, in Wells *v.* Black (Cal.) 37 L. R. A. 619, to be void because inconsistent with the law; and a so-called agreement printed at the top of each page of what is called a "signature book," below which are ruled spaces extending across the page, and under these perpendicular columns, is not made binding on a depositor by writing his name in a column headed "Signature."

Bonds.

A cashier's bond for the faithful discharge of his duties as cashier forever is held, in First Nat. Bank *v.* Briggs (Vt.) 37 L. R. A. 845, to be good for but one year, where he was elected annually and a by-law provided for his appointment during the pleasure of the board.

A surety on a probate bond, who delivers it to the agent of the principal without anything on its face to indicate that other sureties are to be obtained, is held, in Belden *v.* Hurlbut (Wis.) 37 L. R. A. 853, to be precluded from contending that it is not binding on him without the addition of other sureties, after its delivery to the probate judge, who has no notice of such a condition.

Carriers.

An express messenger is bound by a contract between his employer and a railroad company, exempting the latter from liability for injuries to him during transportation, says the court in Louisville, N. A. & C. R. Co. *v.* Keefer (Ind.) 38 L. R. A. 93, since the railroad company in this matter acts as a private carrier.

The ejection of a person who has paid fare, without returning it, because of a refusal to pay fare for a child, is held, in Lake Shore & M. S. R. Co. *v.* Orndorff (Ohio) 38 L. R. A. 140, to render the carrier liable; but before ejecting such person and child the conductor should offer to return the unused value of the ticket or fare over and above the fares for both passengers.

Civil Service.

Confidential positions in the civil service for which competitive examinations need not be had are held, in Chittenden *v.* Wurster (N. Y.) 37 L. R. A. 809, to be not limited to those which are strictly secret; and a classification of such positions made by the proper officer must be held valid as to persons acting under it, until judicially determined to be erroneous.

Conflict of Laws.

An action against stockholders, provided by the Kansas statutes, is held transitory, in Ferguson *v.* Sherman (Cal.) 37 L. R. A. 622, so that it can be brought in any court of general jurisdiction in another state where personal service can be made upon the stockholder.

Conspiracy.

The discharge of an employee who refuses to become a member of a labor association, when this is due to an agreement between such association and an association of employers to prevent permanent employment of any person who did not join the labor union, is held, in Curran *v.* Galen (N. Y.) 37 L. R. A. 802, to render the officers of the labor association liable for conspiracy.

Constitutional Law.

A statute limiting the liability of a railroad company for fires to the difference between the amount of the loss and the amount of insurance on the property is held, in Leavitt *v.* Canadian Pac. R. Co. (Me.) 38 L. R. A. 152, to be applicable to a pre-existing policy of insurance on which a loss occurs after the passage of the statute. This is held not to impair the obligation of any contract, since it merely changes the statutory liability, and parties cannot by any contract limit the right of the legislature to do that.

Corporations.

One holding stock as the self-appointed attorney or trustee of an infant, without anything on the books of the corporation to show that the holder is not the actual and beneficial owner, is held, in Kerr *v.* Urie (Md.) 38 L. R. A. 119, to be liable as a stockholder.

Acquiescence by directors in the president's management of the entire business of a corporation is held, in Jones *v.* Williams (Mo.) 37 L. R. A. 682, sufficient to make his contract binding on the company. This is held in respect to the employment of an editor for a newspaper, with full control of its policy for five years, made with the president as part of a contract by which he sells stock to such editor, where the agreement is ratified by the stockholders.

A corporation transferring shares on their surrender with forged powers of attorney is held, in Pennsylvania Co. for Insurance *v.* Franklin Fire Ins. Co. (Pa.) 37 L. R. A. 780, liable therefor, although the forgery was committed by the son of an executor who had been intrusted with a key to the box in which the shares were kept.

Counties.

The right to levy an execution against any property of a county is held, in Emery County *v.* Burresen (Utah) 37 L. R. A. 732, not to be implied from a statute which expressly exempts certain classes of property belonging to the county from execution, without enumerating or expressly providing for other classes of property.

Courts.

A tribal Indian killing a member of the same tribe while off the reservation is held, in Pablo *v.* People (Colo.) 37 L. R. A. 636, to be subject to trial in state courts and under state laws, since the act of Congress of March 3, 1885.

Electricity.

Injury to a night patrolman by an electric-light wire of which the insulation had been burned off by lightning, when he turned on the electricity in ignorance of the condition of the wire, and it was his duty to turn it on when the trimmers had left it turned off, is held, in Willey *v.* Boston Electric Light Co. (Mass.) 37 L. R. A. 723, to present questions for the jury as to the negligence of the electric company and of the patrolman.

Although an electric-light company is not bound to keep the insulation of its wires on a pole in good condition as against a bare volunteer or mere trespasser, it is held, in Newark Electric L. & P. Co. *v.* Garden (C. C. App. 3d C.) 37 L. R. A. 725, that an employee of a railroad company which has wires on a pole used also for telephone and electric-light wires is not, while transferring wires, a trespasser in setting his foot upon a cross-arm bearing electric-light wires imperfectly insulated.

Elevators.

The right of a tenant to use an elevator as incidental or appurtenant to a basement room is denied in Cummings *v.* Perry (Mass.) 38 L. R. A. 149, where the elevator was not originally intended for use by occupants of that room, and there was no direct access from that room to the elevator, while there were other suitable means of ingress and egress from the room to the street.

Fraud.

Implicit reliance upon representations of a seller is held, in Fargo Gas Light & C. Co. *v.* Fargo Gas & E. Co. (N. D.) 37 L. R. A. 593, to be proper, and the fact that their falsity could have been discovered by investigation will not relieve the seller for making false representations with intent to deceive.

Horse Race.

The bolting of a vicious horse from the track during a race while in charge of a good and expert rider, causing injury to a bystander, is held, in Hallyburton *v.* Burke County Fair Asso. (N. C.) 38 L. R. A. 156, insufficient to render the owners of the horse or the fair association liable, if the horse was not known to be vicious and there were suitable railings between spectators and the race course.

Husband and Wife.

Jurisdiction of a suit by a deserted wife to subject the property of the husband within the territorial jurisdiction of the court to her rights is held, in Murray *v.* Murray (Cal.) 37 L. R. A. 626, to be acquired by publication of process and placing of the property in the hands of a receiver.

A statute giving a deserted wife the right to prosecute or defend in her husband's name any action which he might have prosecuted or defended, with the same powers and rights that he would have had, is held, in Allen *v.* Minnesota L. & T. Co. (Minn.) 37 L. R. A. 679, to be valid, and there is said to be an irrebuttable presumption of law that he has cast upon her a delegated authority in such cases.

Injunction.

An injunction against prosecuting oppressive and unreasonable actions in another state to evade the laws of the domicil of the parties is held, in Miller v. Gittings (Md.) 37 L. R. A. 654, to be proper, although one defendant resides in the state in which an action against partners is brought.

An injunction against the employment of detectives to follow and watch a person, causing him annoyance and inconvenience, interfering with his social intercourse and business, and causing suspicions which damage his financial credit, is denied, in Chappell v. Stewart (Md.) 37 L. R. A. 783, on the ground that there is an adequate remedy at law.

Innkeepers.

An innkeeper who has no license is denied the right to recover for board and lodging, in Randall v. Tuell (Me.) 38 L. R. A. 143, where a penal statute prohibits the business without a license.

Insurance.

Certificates in mutual aid societies are held, in Penn. Mut. L. Ins. Co. v. Mechanics' Sav. Bank & T. Co. (C. C. App. 6th C.) 38 L. R. A. 33, not to constitute "existing insurance," within the meaning of an application.

Many questions as to the distribution of assets of an insolvent insurance company are answered in Boston & A. R. Co. v. Mercantile Trust & D. Co. (Md.) 38 L. R. A. 97, and the other cases on the subject are collected in a note thereto.

The right to assign the interests of a beneficiary to whom an endowment certificate is payable in case of the death of the assured is held, in Carpenter v. Knapp (Iowa) 38 L. R. A. 128, not to exist during the endowment period during which the assured had a right to change the beneficiary. A stipulation requiring the beneficiary's consent to an assignment is held not to apply to a change of beneficiary.

A woman's interest in insurance on her own life is held, in Sydnor v. Boyd (N. C.) 37 L. R. A. 734, to be a part of the body of her estate within a statute restricting contracts as to that estate between herself and husband.

The board of control of the Knights of Pythias is held, in Supreme Lodge K. of P. v. Stein (Miss.) 37 L. R. A. 775, to be a mere ministerial committee without power to pass a law avoiding benefit certificates in case of suicide.

The right of a mortgagee to sue in his own name on an insurance policy payable to him as his interest may appear is upheld in Lowrey v. Insurance Co. of N. A. (Miss.) 37 L. R. A. 779, where his debt is more than the whole value of the insurance or of the property destroyed.

Judgment.

A default judgment in a landlord's summary proceeding for nonpayment of rent is held, in Reich v. Cochran (N. Y.) 37 L. R. A. 805, to defeat an action pending in another court by the tenant to have the lease adjudged a mortgage and canceled for usury.

Master and Servant.

A railroad time table and printed rules for running trains on regular time, without any arrangement for emergencies in case of trains behind time, are held, in Sprague v. New York & N. E. R. Co. (Conn.) 37 L. R. A. 638, insufficient to satisfy the railroad company's obligation to its employees as matter of law, but the question is left to the jury.

Mortgage.

The wrongful execution of a power of sale in a mortgage when there was no default is held, in Rogers v. Barnes (Mass.) 38 L. R. A. 145, to give the mortgagor a right to damages even if the sale was an absolute nullity, where a subsequent transfer to a purchaser for value with an apparently perfect title has made a cloud on the mortgagor's title.

A foreclosure sale of land for part of the mortgage debt is held, in Curtis v. Cutler (C. C. App. 8th C.) 37 L. R. A. 737, to exhaust the lien of the mortgage.

Personal liability of a grantee who assumed and agreed to pay a mortgage is held, in Enos v. Sanger (Wis.) 37 L. R. A. 862, to remain in case of deficiency on foreclosure, although his immediate grantor was not liable therefor.

Municipal Corporations.

The right of a municipality to own an electric-light plant and furnish lights to its citizens is sustained in Mitchell v. Negaunee (Mich.) 38 L. R. A. 157.

The lowest reliable and responsible bidder for a public contract is held, in Colorado Pav-

ing Co. *v.* Murphy (C. C. App. 8th C.) 37 L. R. A. 630, to have no vested or absolute right to the enforcement of a statute requiring the letting of the contract to such bidders, as the statute is not for his benefit.

An ordinance regulating secondhand stores is held, in State *v.* Itzcovitch (La.) 37 L. R. A. 673, to be void in the absence of special legislative permission to enact ordinances of that character.

The right of a municipality to build and own a railroad in the city streets to furnish rapid transit to its inhabitants is sustained, in Sun Printing & P. Asso. *v.* New York (N. Y.) 37 L. R. A. 788. It is also held that such road may be leased to a private corporation under statutory authority.

Negligence.

For damages done by drifting logs which had broken from a raft in a violent storm without fault of the owner, and had been left floating until a later violent storm arose, it was held, in New Orleans & N. E. R. Co. *v.* McEwen (La.) 38 L. R. A. 134, that the owner was not liable, although he had not definitely abandoned them, if he was proceeding to recover them as fast as he could do so without unreasonable expense.

Physicians.

The degree of knowledge, skill, and care required of a physician or surgeon is held, in Whitesell *v.* Hill (Iowa) 37 L. R. A. 830, to be that ordinarily possessed by those practising in similar localities, and not necessarily limited to that which is in fact exercised in his particular locality.

Railroads.

The lessor of a railroad leased under statutory authority without any provision to exempt from liability is held, in Lee *v.* Southern Pac. R. Co. (Cal.) 38 L. R. A. 71, to remain liable for negligent omission of its own duty in the construction of the road.

Injury to a person walking along a street, by a door falling from a moving freight train, is held, in St. Louis, I. M. & S. R. Co. *v.* Neely (Ark.) 37 L. R. A. 616, to raise a presumption of negligence on the part of the railroad company, under a statute making such companies liable for all damages done by running trains.

The killing of a dog by a railroad train is held, in St. Louis Southwestern R. Co. *v.* Stanfield (Ark.) 37 L. R. A. 659, to be an injury to property within the law making railroads liable for all damages to property by running trains.

Real Property.

A grantor's right of re-entry for breach of a condition subsequent is held, in Upington *v.* Corrigan (N. Y.) 37 L. R. A. 794, to belong to the heir after the grantor's decease, and not to constitute an estate or interest in real property which can be devised.

Receivers.

The appointment of a receiver for dissensions between two persons who are equal owners of the stock of a corporation and also its officers is denied, in Wallace *v.* Pierce-Wallace Pub. Co. (Iowa) 38 L. R. A. 122, so long as neither of them commits any actual wrong.

Sales.

An implied warranty on a sale of felt cloth, knowing that it is to be used for making ulsters, is held, in Bierman *v.* City Mills Co. (N. Y.) 37 L. R. A. 799, to be made to the effect that the cloth is merchantable and free from any latent defect which would make it unfit for the purposes intended.

Statutes.

The failure of the legislative journal to show that a bill was read on three days, as required by the Constitution, is held, in Cohn *v.* Kingsley (Idaho) 38 L. R. A. 74, to be fatal, as the journals must affirmatively show that the Constitution was complied with.

Taxes.

The taxation of water in a mill pond is held, in Union Water Power Co. *v.* Auburn (Me.) 37 L. R. A. 651, to be proper only as a part of the mill property, and therefore the water power cannot be assessed at the place where the dam is if it is used elsewhere.

Discrimination between residents and non-residents of the state with respect to a deduc-

tion of debts from taxable property is held, in Sprague *v.* Fletcher (Vt.) 37 L. R. A. 840, to be an unconstitutional denial of equal privileges and immunities.

Tolls.

The expiration of the charter of a toll-road company is held, in Virginia Canon Toll Road Co. *v.* People, Vivian (Colo.) 37 L. R. A. 711, to make the road a public way,—at least if the corporation had only an easement therein and did not own the fee.

Trusts.

The right of the trustee of land to pay over the purchase price thereof to the beneficial owner without searching the records for liens against the latter is sustained in Bartz *v.* Paff (Wis.) 37 L. R. A. 848, and he is held not to incur the risk of being compelled to account a second time to creditors of such owner.

Voters and Elections.

The right of women to vote is denied in Gougar *v.* Timberlake (Ind.) 37 L. R. A. 644, where the Constitution gives the right in express terms to "male" citizens, without expressly negativing the rights of women.

A vote of the majority of property taxpayers in numbers and in value is held, in Citizens & Taxpayers of De Soto Parish *v.* Williams (La.) 37 L. R. A. 761, to mean a majority of those actually present and voting at an election. Those who fail to vote are presumed to assent to the expressed will of the majority.

Waters.

A water supply to each tenant of a building as a separate consumer from whom rents are to be collected is held, in Kelsey *v.* Board of Fire & W. Comrs. (Mich.) 37 L. R. A. 675, not to be required by law merely because the owner of the building has furnished all the tenants with separate shut-offs having locks and keys, and tendered the keys to the commissioners.

Notice to consumers of water and an opportunity to be heard before rates are established are held, in Silkman *v.* Board of Water Comrs. (N. Y.) 37 L. R. A. 827, not to be demandable on the ground that the water rents are taxes; and an application for water is regarded as a consent to pay the rates charged.

Wharves.

An ordinance authorizing a railroad corporation to erect buildings and other permanent structures upon the batture in front of its riparian property on the bank of the Mississippi river within the limits of the city of New Orleans, and connect the same with wharves on the edge of the water for its exclusive use, for ninety years, is held, in Louisiana Construction & Imp. Co. *v.* Illinois Cent. R. Co. (La.) 37 L. R. A. 661, to be invalid.

Wills.

A condition in a devise to a widow, that her remarriage shall terminate her estate, is held, in Herd *v.* Catron (Tenn.) 37 L. R. A. 731, to be valid.

New Books.

"Abbreviations Used in Law Books." By Charles C. Soule. Boston Book Co., Boston, Mass. $1.50.

"Tabulation of Texas Decisions." By Nat P. Jackson. Gammel Book Co., Austin, Tex. $2.50.

"Select Texas Statutes." Annotations and Forms and Notaries' Manual. By Nat P. Jackson. Gammel Book Co., Austin, Tex. $4.

"Real Estate Proceedings, with Precedents." By D. H. McFalls. W. C. Little & Co., Albany, N. Y. $4.

"Practice in the Probate Court of Massachusetts." By Sidney Perley. George B. Reed, Publisher, Boston, Mass. $3.

"Bradner's Rules of Evidence." 2d ed. Callaghan & Co., Chicago, Ill. $6.

"Colebrooke on Collateral Securities." 2d ed. Callaghan & Co., Chicago, Ill. $6.

"Newell on Defamation." 2d ed. Callaghan & Co., Chicago, Ill. $6.

"Shiras' Equity Practice." 2d ed. Callaghan & Co., Chicago, Ill. $2.50.

Vol. 10 "American Criminal Reports." By Hon. John Gibbon. Callaghan & Co., Chicago, Ill. $5.

"Estee's Pleadings, Practice, and Forms." 4th ed. By Charles T. Boone. Bancroft-Whitney Co., San Francisco, Cal. 3 Vols. $18.

"Bouvier's Law Dictionary." New Edition. By Francis Rawle. Boston Book Co., Boston, Mass. 2 Vols. $12.

Recent Articles in Law Journals and Reviews.

"The Relation between Assumption of Risks and Contributory Negligence.—31 American Law Review, 667.

"The Right of the Public to Regulate the Charges of Common Carriers and of All Others Discharging Public, or Quasi-Public, Duties."—31 American Law Review, 685.

"Lawmaking."—31 American Law Review, 701.

"The Federal Anti-Trust Law and Its Judicial Construction."—31 American Law Review, 721.

"Andrew Jackson and His Collision with Judges and Lawyers."—31 American Law Review, 801.

"Land Transfer by Registration of Title in Germany and Austria-Hungary."—31 American Law Review, 827.

"Constitutional Construction and the Commerce Clause."—31 American Law Review, 859.

"Proof of Fraud under Denial."—31 American Law Review, 865.

"Status of a Wife in International Marriages."—31 American Law Review, 870.

"Executive Regulations."—31 American Law Review, 876.

"The Allurement of Infants."—31 American Law Review, 891.

"The Identification of Criminals by the Bertillon System."—3 Western Reserve Law Journal, 165.

"Irregular Indorsements."—3 Western Reserve Law Journal, 174.

"Estoppel: Purchase for Value without Notice."—17 Canadian Law Times, 282.

"Executors: Petition for Advice."—17 Canadian Law Times, 287.

"The History of Trover."—11 Harvard Law Review, 277.

"Registration of Title to Real Estate."—11 Harvard Law Review, 301.

"Warranties and Similar Agreements."—11 Harvard Law Review, 315.

"Power of Municipality to Declare What Constitutes a Nuisance."—45 Central Law Journal, 487.

"Beneficial Associations—Change of Beneficiary."—45 Central Law Journal, 491.

"Schuyler against Curtis and the Right to Privacy."—36 American Law Register and Review, N. S., 745.

"Railroad Reorganization Agreements."—36 American Law Register and Review, N. S., 760.

"Construction; Some of Its Uses and Abuses."—5 American Lawyer, 565.

"Constitutional Construction and the Commerce Clause."—5 American Lawyer, 568.

"On the Right to Pledge Securities Carried on a Margin."—5 American Lawyer, 573.

"The Struggles and Failures of Young Attorneys."—5 American Lawyer, 574.

"The Brotherhood of Lawyers."—5 American Lawyer, 575.

"The Legality of the Arrest and Trial of Jesus."—5 American Lawyer, 576.

"The Silver Oar of the Admiralty."—23 Law Magazine & Review, 5.

"Estates pur Autre Vie."—23 Law Magazine & Review, 7.

"The Punishment of Crime under the Roman Empire."—23 Law Magazine & Review, 12.

"A Charge Given by Sir Leoline Jenkins at a Session of Admiralty within the Cinque Ports."—23 Law Magazine & Review, 23.

"The Law of Hawkers and Peddlers."—45 Central Law Journal, 444.

"Quitclaim Deed; Covenant; After-acquired Title."—45 Central Law Journal, 447.

"Government by Injunction."—3 Kansas City Bar Monthly, 33.

The Humorous Side.

ALMOST A JOKE.—Florien Giauque, in the preface to his excellent little manual for notaries and conveyancers, yields to a request from his publishers for the pronunciation of his name. He states that the g is like z in azure and the name approximately Gee-oak, the accent on the last syllable. The most serious person is likely to make a "joke" of this.

COLLEGE MEN WANTED.—The "Solicitor's Journal" recalls "a diverting case" in which the whole force of a solicitor's establishment, during a family interview respecting the division of property, "was engaged in preventing the members . . . from flying at each other's throats." Apropos of this and with some comments on the danger of violence to lawyers, the "New York Law Journal" says the men most in demand for clerks and students in law offices hereafter may be those "who have been most frequently guilty of murder or mayhem in college foot-ball games, and managed themselves to graduate physically intact."

"HE COMETH NOT, SHE SAID."—The expected bridegroom's default of appearance on the bridal day resulted in an action for breach of promise in a Texas court. His futile excuses were no better than those of the absentees from the scriptural feast, whom wife, field, and oxen had detained. Alleged lameness proved but a lame excuse. At the most that could justify a postponement, but not a repudiation, of the marriage. *Non constat*, he might have hired a cab. Alleged insanity in the lady's family was proved to have been known by him when the engagement was made. Then, as an after-thought, he said that she had discarded him and ordered him to keep away, but it appeared that this was after his own breach of the contract. Finally he tried to show that she was no longer young, but the court rebuked this by saying, "there was fully as much culpability in breaking a promise to an elderly woman as to a young one," evidently thinking this a case where age adds increase of sorrow. She got judgment for $1,000 damages.

DIAMOND APPAREL.—The following anecdote is sent by a Kentucky correspondent who says it is the exact truth and has never been published.

A young man who had not found it convenient to pay a tailor's bill was brought up on a creditor's bill by the cruel tailor before a very kind hearted vice-chancellor, who liked the youth. He was handsomely dressed and wore a costly diamond stud in his shirt bosom, but declared under oath that he had no property except his wearing apparel. The tailor's lawyer claimed that a diamond stud was not an article of exempt apparel and asked for its surrender, but the judge ruled that the diamond button held the parts of the shirt together and its removal would lead to indecent exposure of the person. Then the lawyer urged that the shirt was of a new kind which buttoned in the back, but the judge met this by saying: "The presumption of the law is that shirts button in front, and the court does not judicially know that shirts ever button in the back. The court will not require the defendant to submit to an examination to rebut the presumption." And so the diamond remained in the bosom which cherished it.

MADE IT HIMSELF.—The following crude attempt at an olographic will successfully stood the test in the supreme court of California:

"Crolldepedro february 3 1892

"This is to serifey that ie levet to mey wife

"Real and persnal and she to dispose for them

"as she wis." "PATRICK DONOHUE."

The Lawyer's Will.

Austin Bierbower, Chicago, Ill.

I give and bequeath
To Heaven my soul,
And leave to the earth
My body to hold.

To Heaven in fee
Do I give my soul,
To keep it forever,
And keep the whole.

But I leave my body
To the earth in trust,
To account to Heaven
For its proceeds of dust.

For the natural life
Of this planet I leave
My body to Earth,
And afterwards give

The remainder to Heaven,
In fee, like the soul,
To continue forever,
The two a joint whole.

A vested remainder
Of my body I give
To Heaven, so that it
Gets all I've to give.

For having already
The soul in possession,
'Twill need but the body
To have all the rest of me.

And should this my testament fail of effect,
And anything lapse
Of this my bequest,—

That Heaven can't take,
Or that hell gets a part
Of my personal property
By any default,

Good God if the Devil
Comes in for his share
On the ground of the evil
I've done or have dared

I pray my effects
May descend not by law;
For if they don't go by will
The Devil 'll get all.

CODICIL.

And should I perchance
Have title alone
To the life that's now ending
And soon to be gone—

Should life in the future,
That's so full of danger,
And is after all but a
Contingent remainder,

Not pass by devise,
But determine with me,
And my life estate prove
The whole of the fee—

Then dying a bankrupt,
My will's not worth proving,
And chiefly the Devil
Will suffer by losing.